

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TRAGENE DE'MARKO
WILLIAMS, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
December 19, 2006

Petitioner-Appellee,

v

TRACY RENEE WILLIAMS,

Respondent,

and

EUGENE WILLIAMS,

Respondent-Appellant.

No. 270157
Wayne Circuit Court
Family Division
LC No. 04-426280-NA

Before: Meter, P.J., and O'Connell and Davis, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(ii), (c)(ii), (g), (h), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A few months before respondent-appellant's incarceration for violating parole, his nearly two-year-old child was found in a home that was in "deplorable condition" without gas, electric, or water service. Living conditions included falling plaster and exposed wires, and the living area was warmed only by a heater sitting near its two-gallon source of kerosene. Authorities could not "locate a suitable relative for placement," so the child was placed in foster care. The parental rights of the child's custodial mother were eventually terminated. Although questions arose regarding whether respondent received a treatment plan, including visitation, he did not visit the child before his incarceration, which had continued more than two years at the time of the trial court's final disposition, and was due to continue for at least another 4 ½ months.

On appeal, respondent-appellant does not directly challenge the evidentiary support for the statutory grounds for termination, but instead contends that petitioner did not prove that he

was unfit to parent his son or that it would be in the best interests of the child to terminate his parental rights. However, the statutory grounds for termination do not require petitioner to prove that a respondent is an unfit parent. Rather, under MCL 712A.19b(3)(a)(ii), termination is proper when clear and convincing evidence demonstrates that the parent has deserted the child for 91 or more days and has not sought custody of the child during that period. Because petitioner established this and at least two other grounds for termination, the trial court did not clearly err in finding that at least one statutory ground had been established by clear and convincing evidence. MCR 3.977(J); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000).

The evidence demonstrated that respondent-appellant had occasionally spent time with the child, but his ability to contact the child was limited by his incarceration. Once incarcerated, respondent-appellant failed to initiate or maintain contact with his young son. Although respondent-appellant testified that he did not know where the child was located, he could have sent letters through the caseworker or a relative. In fact, respondent-appellant sent the caseworker approximately six letters asking about his son. Moreover, respondent-appellant allowed four months to pass without even inquiring after the child. Under the circumstances, the trial court did not clearly err in determining that respondent-appellant deserted the child for purposes of the statute. The evidence also established MCL 712A.19b(3)(c)(ii), (g), and (j). Any error in finding that subsection (3)(h) was clearly and convincingly established does not impair the validity of the trial court's findings regarding the other statutory grounds. *In re Trejo*, *supra* at 360.

Finally, the trial court did not clearly err in its determination that termination would not clearly contravene the child's best interests. MCL 712A.19b(5). Although respondent-appellant expressed a desire to care for his son and plan for his future, he had only spent limited spans of time with his young son and had not had any contact with him during his two-year incarceration or the months preceding his incarceration after the child was placed in foster care. Furthermore, the evidence reflects that the child was subjected to awful living conditions while respondent-appellant was somewhat active in his care and upbringing, and that there were legitimate concerns regarding respondent-appellant's criminal history and optimistic plans for release. In short, the trial court's findings comported with the young child's need for permanency and stability and were not clearly erroneous. MCL 712A.19b(5); *In re Trejo*, *supra* at 356.

Affirmed.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis